



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Amalgamated Transit Union, Local 717

Complainant

v.

Manchester Transit Authority

Respondent

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Case No. M-0596-15

Decision No. 2001-020

PRE-HEARING DECISION and ORDER

BACKGROUND

The Amalgamated Transit Union, Local 717, ("Union") filed unfair labor practice charges on February 20, 2001 pursuant to RSA 273-A:5 I (a), (b), (c), (e), (f), and (h) alleging that the Manchester Transit Authority ("Authority") and its agents breached certain provisions of the parties' Collective Bargaining Agreement (CBA) by failing and refusing to employ a sufficient number of employees to carry out the provisions of the work schedules therein contained. This alleged failure on the part of the Authority results in transit operators being required on a regular basis to work substantial mandatory overtime.

The Authority answers by recognizing that transit operators are required to work overtime but defends the practice on grounds of the existence of emergency circumstances and the unavailability of qualified transit operators. Additionally, it responds that since the parties' CBA provides for final and binding arbitration of disputes, the Union has breached the CBA and RSA 273-A:6 by filing this action with the PELRB and not following the grievance procedures contained within the CBA. Further, to the extent that the Union has alleged actions which transpired six (6) months prior to the filing of the unfair labor practice complaint, those actions are barred by the six month limitation on actions.

The Authority seeks a dismissal of the Union's complaint, a finding that the Union has breached the CBA by filing its action with the PELRB and for an award of reasonable attorneys' fees and costs. For its part, the Union requests relief in the form of a finding that the Authority has engaged in an unfair labor practice and requests that the PELRB issue an immediate temporary cease and desist order against the Authority pending a full hearing on the merits and, following such hearing, order the Authority to permanently cease and desist from its practice constituting the alleged breach lacking the existence of a genuine emergency.

PARTICIPATING REPRESENTATIVES

For the Complainant: Vincent A Winners, Jr., Esquire

For the Respondent: Diane Murphy Quinlan, Esquire and Erich Y. Shultz, Esquire.

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not under the terms of the parties' Collective Bargaining Agreement, (CBA) the Complainant must complete steps of the Grievance Procedure provision before seeking relief from the Public Employees Labor Relations Board? If so, has the Union committed an unfair labor practice in bringing the instant complaint before the PELRB at this time?
2. Whether or not under the circumstances existing between the parties in this matter, an allegation of conduct constituting a breach occurring six months prior to the filing of the Union's complaint is barred by application of RSA 273-A:6 VII?
3. Whether or not the Authority committed an unfair labor practice through conduct resulting in the regular and significant need for transit operators to work mandatory overtime?

WITNESSES

For the Complainant:

1. John T. Mahoney, transit operator and President of Local 717
2. Donald Gosselin, transit operator and former President of Local 717
3. Debra Oxley, transit operator
4. Barbara Condon, transit operator
5. Diane, Cote, transit operator
6. Joanne Burgess, transit operator
7. Francis Canning, former Superintendent of Transportation, MTA

For the Respondent:

1. John Webster, Superintendent of Transportation, MTA
2. Donald Clay, General Manager, MTA
3. Pat Golan, Manager School Bus Operations

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

1. Current Collective Bargaining Agreement
2. Prior member grievances
3. Letter from Webster to Bedard, dated 3/13/99
4. Letter from Mahoney to Webster, dated 5/20/99
5. Letter from Mahoney to Webster, dated 5/20/99
6. Letter from Clay to Mahoney, dated 5/26/99
7. Letter from Clay to Mahoney, dated 5/27/99
8. Letter from Clay to Mahoney, dated 9/27/99
9. Notice from Mahoney to transit operators, dated 8/1/00
10. Sidebar agreement, dated 9/22/92
11. Letter Cote to Union Grievance Committee, dated 12/7/00
12. Letter Oxley to Public Employee Labor Relations Board, undated

For the Respondent:

1. Current Collective Bargaining Agreement
2. Union grievances filed with the Authority
3. Job advertisements and other documentation evidencing attempts to hire
4. Roster of employees
5. Work schedules
6. Bus Schedules
7. Payroll documents
8. Notes regarding contract negotiations

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits

are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order

DECISION AND PRE-HEARING ORDER

1. The parties shall submit an original and five copies of a jointly executed Agreed Statement of Facts related to the jurisdictional issue raised by the Authority and their respective Memoranda of Law in support thereof to the Board no later than April 17, 2001. Any necessary and responsive supplementary Memoranda of Law to be filed by either party shall be filed prior to the start of the scheduled hearing.
2. The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB no later than April 17, 2001. The party representatives shall meet, or otherwise arrange, to pre-mark for identification purposes and exchange copies of their respective proposed exhibits, excepting those singularly required for impeachment purposes, no later than April 17, 2001. Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
3. Any preliminary, procedural or dispositive motions shall be filed by the parties no later than ten (10) days prior to the scheduled hearing date.
4. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, April 24, 2001 beginning at 9:30 AM.

Signed this 4th day of April, 2001.



Donald E. Mitchell, Esq.
Hearing Officer